



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-109187-11]

RIN 1545-BK15

Nonrecognition of Gain or Loss on Certain Dispositions of Installment Obligations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the nonrecognition of gain or loss on certain dispositions of an installment obligation. In general, under the proposed regulations a transferor does not recognize gain or loss on certain dispositions of an installment obligation if gain or loss is not recognized on the disposition under another provision of the Internal Revenue Code. The proposed regulations also provide that this general rule does not apply to the satisfaction of an installment obligation. For example, an installment obligation of an issuer, such as a corporation or partnership, is satisfied when the holder transfers the obligation to the issuer for an equity interest in the issuer.

DATES: Comments or a request for a public hearing must be received by **INSERT**

DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-109187-11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered Monday through Friday between the hours of 8

a.m. and 4 p.m. to CC:PA:LPD:PR (REG-109187-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-109187-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Arvind Ravichandran, (202) 317-4718; concerning the submission of comments and/or requests for a public hearing, Olawafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations in 26 CFR part 1 under section 453B of the Internal Revenue Code (Code) relating to gain or loss on the disposition of installment obligations. Section 453B was added to the Code by the Installment Sales Revision Act of 1980, Public Law 96-471 (94 Stat. 2252 (1980)).

Section 453B replaces and provides generally the same rules as former section 453(d). In general, under section 453B(a) gain or loss is recognized upon the satisfaction of an installment obligation at other than its face value, or upon the distribution, transmission, sale, or other disposition of the installment obligation. Section 1.453-9(c)(2) of the Income Tax Regulations, issued under former section 453(d), provides an exception to the general rule. Under §1.453-9(c)(2), if the Code provides an exception to the recognition of gain or loss for certain dispositions, then gain or loss is not recognized under former section 453(d) on the disposition of an installment obligation within that exception. The exceptions identified in §1.453-9(c)(2) include certain transfers to corporations under sections 351 and 361, contributions to

partnerships under section 721, and distributions by partnerships to partners under section 731 (except as provided by section 736 and section 751).

Under Rev. Rul. 73-423, 1973-2 CB 161, the exceptions in §1.453-9(c)(2) to recognition of gain or loss under the installment sale rules do not apply to the transfer of an installment obligation that results in a satisfaction of the obligation. Thus, the revenue ruling holds that the transfer of a corporation's installment obligation to the issuing corporation in exchange for stock of the issuing corporation results in a satisfaction of the obligation. In that case, the transferor must recognize gain or loss on the satisfaction of the obligation to the extent of the difference between the transferor's basis in the obligation and the fair market value of the stock received, even though gain or loss generally is not recognized on section 351 transfers.

Explanation of Provisions

These proposed regulations republish in §1.453B-1(c) the general rule in §1.453-9(c)(2) under which gain or loss is not recognized upon certain dispositions. In addition, the proposed regulations incorporate and expand the holding of Rev. Rul. 73-423 to provide that a transferor recognizes gain or loss under section 453B(a) when the transferor disposes of an installment obligation in a transaction that results in the satisfaction of the installment obligation, including, for example, when an installment obligation of a corporation or partnership is contributed to the corporation or partnership in exchange for an equity interest in the corporation or partnership. Finally, the proposed regulations amend the regulations under sections 351, 361, and 721 to include a cross-reference to the regulations under section 453B regarding recognition of any gain or loss upon the satisfaction of an installment obligation. The IRS and the

Treasury Department anticipate publishing regulations addressing the general rule under section 453B(a) and the basis of an obligation under section 453B(b) in the future. Therefore, regulations under §1.453B-1(a) and (b) are reserved.

Proposed Effective/Applicability Date

These regulations are proposed to apply to satisfactions, distributions, transmissions, sales, or other dispositions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS invite comments on all aspects of the proposed rules. In particular, the Treasury Department and the IRS request comments on how a

partnership's distribution of a partner's installment obligation to the obligor partner should be treated under section 453B, and whether there are circumstances in which such a distribution should not result in gain or loss recognition by the partnership. All comments will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Arvind Ravichandran, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and record keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.351-1(a)(1) is amended by adding a heading and new second and third sentences to read as follows:

§1.351-1 Transfer to corporation controlled by transferor.

(a)(1) In general. * * * See §1.453B-1(c) for rules requiring a transferor to recognize gain or loss upon the satisfaction of an installment obligation of a corporation

when the obligation is exchanged for stock in that corporation. The preceding sentence applies to satisfactions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**. * * *

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Par. 3. Section 1.361-1 is amended by adding new second and third sentences to read as follows:

§1.361-1 Nonrecognition of gain or loss to corporations.

* * * See §1.453B-1(c) for rules requiring a corporation transferring an installment obligation to the acquiring corporation (as that term is used in §1.368-1) to recognize gain or loss upon the receipt of stock of the acquiring corporation or another party to the reorganization (as defined in §1.368-2(f)) in satisfaction of that installment obligation. The preceding sentence applies to satisfactions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**. * * *

Par. 4. Section 1.453B-1 is added to read as follows:

§1.453B-1 Gain or loss on disposition of installment obligations.

(a) General rule. [Reserved].

(b) Basis of obligation. [Reserved].

(c) Dispositions on which no gain or loss is recognized.

(1) Certain nonrecognition transactions--(i) In general. If the Internal Revenue Code provides an exception to the recognition of gain or loss for certain dispositions, no gain or loss shall be recognized under section 453B on the disposition of an installment obligation within that exception. These exceptions include--

(A) Certain transfers to corporations under sections 351 and 361;

(B) Contributions to a partnership under section 721; and

(C) Distributions by a partnership to a partner under section 731 (except as provided by sections 704(c)(1)(B), 736, 737, and 751(b)).

(ii) Transactions resulting in a satisfaction of installment obligations. Paragraph (c)(1)(i) of this section does not apply to a disposition that results in a satisfaction of an installment obligation, regardless of whether the disposition occurs as part of a transaction for which the Internal Revenue Code provides an exception to the recognition of gain or loss. These dispositions include, but are not limited to--

(A) The receipt of stock of a corporation from the corporation in satisfaction of an installment obligation of the corporation; and

(B) The receipt of an interest in a partnership from the partnership in satisfaction of an installment obligation of the partnership.

(2) Effective/applicability date. This paragraph (c) applies to satisfactions, distributions, transmissions, sales, or other dispositions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.721-1(a) is amended by adding new ninth and tenth sentences to read as follows:

§1.721-1 Nonrecognition of gain or loss on contribution.

(a) * * * For rules in determining a partner's gain or loss when an installment obligation of a partnership is contributed to the partnership, see section 453B and §1.453B-1(c). The preceding sentence applies to satisfactions of installment obligations after the date these regulations are published as final regulations in the **Federal Register**.

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John Dalrymple,
Deputy Commissioner for Services and Enforcement.